

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

AUDIE T. MCGEE,

Plaintiff(s),

v.

SOCIAL SECURITY ADMINISTRATION,

Defendant(s).

Case No.: 2:18-cv-02238-RFB-NJK

REPORT AND RECOMMENDATION

On November 26, 2018, the Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e) and dismissed it with leave to amend. Docket No. 3. In particular, the Court found it was unclear from the complaint whether Plaintiff had exhausted her administrative remedies and, if so, whether the complaint was timely filed. *Id.* at 2.¹ To the extent Plaintiff believed these deficiencies could be cured, the Court afforded the opportunity to file an amended complaint. *Id.* at 3. The Court cautioned that “[f]ailure to file an amended complaint as required herein will result in a recommendation that this case be dismissed without prejudice.” *Id.* (emphasis in original). The deadline to amend the complaint was December 17, 2018. *Id.* To date, no amended complaint has been filed.

As Plaintiff has not alleged to date that she has exhausted her administrative remedies or that her case here is timely if she has exhausted her administrative remedies, she has failed to state

¹ As Plaintiff is proceeding *pro se*, the Court construes her filings liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 a claim on which relief may be granted and this case should be dismissed. See 28 U.S.C. §
2 1915(e)(2)(B)(ii).

3 Accordingly, the undersigned **RECOMMENDS** that this case be **DISMISSED** without
4 prejudice.

5 Dated: December 20, 2018

6 
7 Nancy J. Koppe
United States Magistrate Judge

8

9 **NOTICE**

10 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be
11 in writing and filed with the Clerk of the Court within (14) days after service of this Notice. The
12 Supreme Court has held that the courts of appeal may determine that an appeal has been waived
13 due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142
14 (1985), *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that (1) failure to file
15 objections within the specified time and (2) failure to properly address and brief the objectionable
16 issues waives the right to appeal the District Court's order and/or appeal factual issues from the
17 order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
18 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

19

20

21

22

23

24

25

26

27

28